

# ARKANSAS SUPREME COURT

No. CR 08-918

FREDERICK MARKS  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      November 20, 2008

APPELLEE'S MOTION TO DISMISS  
APPEAL [CIRCUIT COURT OF  
CLARK COUNTY, CR 2003-52, HON.  
JOHN A. THOMAS, JUDGE]

MOTION GRANTED; APPEAL  
DISMISSED.

## PER CURIAM

A judgment of conviction entered July 16, 2003, reflects that appellant Frederick Marks entered a plea of guilty to aggravated robbery for which a sentence of 480 months' imprisonment was imposed. He also pleaded guilty to possession of a firearm for which imposition of an additional 180 months' imprisonment was suspended.

On March 26, 2008, appellant filed in the trial court a pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1. The petition was denied, and appellant lodged an appeal here from the order. Now before us is a motion filed by the appellee State asking that the appeal be dismissed on the ground that the Rule 37.1 petition was not timely filed.

The motion is granted. An appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam). It is clear from the record lodged in this appeal that appellant's Rule 37.1 petition was not timely filed and, as a result, he cannot prevail on appeal.

Where the defendant entered a plea of guilty, Arkansas Rule of Criminal Procedure Rule 37.2(c) requires that the petition for postconviction relief be filed within ninety days of the entry of the judgment. In appellant's case, the judgment was entered almost five years before the petition was filed. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). Appellant argued in his Rule 37.1 petition that the claims raised were sufficient, if proven, to void the judgment, but we have previously held that even a ground sufficient to void the judgment of conviction must be alleged in a petition that complies with the time requirements of Rule 37. *Collins v. State*, 324 Ark. 322, 920 S.W.2d 846 (1996).

Motion granted; appeal dismissed.